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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

JAMIE HIGGINS,

Plaintiff and Appellant,

v.

YOLANDA FRANCO,

Defendant and Respondent.

B286223

(Los Angeles County
Super. Ct. No. BC639471)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Terry A. Green, Judge. Affirmed.

Jamie Higgins, in pro. per., for Plaintiff and Appellant.

Klinedinst, Gregor A. Hensrude and Robert M.

Shaughnessy, for Defendant and Respondent.

INTRODUCTION

Plaintiff and appellant Jamie Higgins, a convicted murderer serving a life sentence without the possibility of parole, initiated a civil action for legal malpractice against defendant and respondent Yolanda Franco, the attorney appointed to represent him in postconviction discovery proceedings ancillary to a petition for writ of habeas corpus (Pen. Code, § 1054.9). The superior court granted respondent's motion for judgment on the pleadings. Higgins appeals, but failed to provide an adequate record for our review. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A jury convicted appellant and a codefendant of the 1992 first degree murder with special circumstances of one victim, the attempted premeditated murder of a second victim, burglary, and two counts of attempted robbery. Appellant was sentenced to life in prison without the possibility of parole. Division One of this court affirmed the judgment. (*People v. Glass and Higgins* (May 28, 1996, B087984 [nonpub. opn.].)

In 2015, appellant sought discovery materials in order to pursue a postconviction petition for habeas corpus. (Pen. Code, § 1054.9.) The superior court appointed respondent to represent appellant in this endeavor.¹

Facts concerning respondent's conduct as appellant's postjudgment appointed attorney are scant. In his opening brief, appellant advised he sued respondent "for general negligence,"

¹ Appellant's request for the appointment of counsel was initially denied. Counsel was appointed after the Supreme Court granted appellant's petition for writ of mandate.

alleging her conduct was the “legal (proximate) cause of damages” because respondent failed to secure appellant’s presence at the discovery hearings or physical possession of “requested discovery materials.” In a document filed in the trial court (see fn. 2), appellant argued respondent viewed, but failed to secure or deliver to him, “color photographs” he might use in an anticipated habeas petition. That document did not describe the photographs or explain how they were necessary to obtaining habeas relief. It did not include any information concerning a habeas petition, e.g., whether one was filed and, if so, whether it was successful.

Appellant represented himself in the trial court. Respondent successfully moved for judgment on the pleadings without leave to amend. Higgins timely appealed from the ensuing judgment.

DISCUSSION

I. *Governing Principles*

A defendant is entitled to judgment on the pleadings when the complaint fails to allege “facts sufficient to constitute a cause of action.” (Code Civ. Proc., § 438, subd. (c)(1)(B)(ii)(a).) On appeal, our review of the judgment is de novo. (*People ex rel. Harris v. Pac Anchor Transportation, Inc.* (2014) 59 Cal.4th 772, 777.) We independently examine the operative complaint and accept as true all properly pleaded material facts. (*Ibid.*)

A judgment is presumed to be correct, and appellant has the burden to affirmatively demonstrate error by the trial court and prejudice as a result of that error. (*Widson v. Int’l. Harvester Co.* (1984) 153 Cal.App.3d 45, 53.) This burden requires appellant to provide the Court of Appeal with an adequate record

for review. Failure to do so results in the forfeiture of appellate issues, and the trial court judgment will be affirmed. (*Jameson v. Desta* (2018) 5 Cal.5th 594, 609 (*Jameson*)). Appellant’s status as a self-represented litigant does not relieve him of the obligation to present this court with an adequate record for review. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.)

II. *Inadequate Record for Review*

As noted, appellant represented himself in the trial court; he continues to represent himself on appeal. No reporter was present for the hearing on respondent’s motion, and no suitable substitute for a reporter’s transcript was included in the record on appeal. Appellant’s designation of the documents to be included in the clerk’s transcript was sparse and did not include the complaint or respondent’s motion for judgment on the pleadings. The only pertinent documents in the clerk’s transcript are appellant’s opposition to respondent’s motion for judgment on the pleadings,² respondent’s reply in support of her motion, the trial court’s minutes reflecting the granting of respondents’ motion, and the judgment in respondent’s favor.

This record is inadequate for appellate review. Appellant would be entitled to a reversal only if we review the challenged pleading and independently conclude it states a cause of action for legal malpractice. (*California Amplifier, Inc. v. RLI Ins. Co.* (2001) 94 Cal.App.4th 102, 107.) The failure to include the complaint in the appellate record deprives this court of that

² Appellant labeled his opposition as a “request for entry of default with dismissal of motion for judgment on the pleadings and answer with prejudice.”

opportunity.³ Appellant has forfeited his challenge to the judgment. (*Jameson, supra*, 5 Cal.5th at p. 609.)

³ Appellant appears to contend the sole issue is whether his actual innocence is a necessary element of a legal malpractice cause of action. He insists it is not and seeks to distinguish *Wiley v. County of San Diego* (1993) 19 Cal.4th 532 and *Coscia v. McKenna & Cuneo* (2001) 25 Cal.4th 1194 on the basis those decisions involved defendants' efforts to sue their trial counsel for legal malpractice, whereas he seeks to sue the attorney appointed to represent him in postconviction proceedings. But when a criminal defense attorney is sued for legal malpractice, actual innocence is only one of the elements of the cause of action. The others are "(1) the duty of the attorney to use such skill, prudence, and diligence as members of his or her profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the breach and the resulting injury; and (4) actual loss or damage resulting from the attorney's negligence." (*Wilkinson v. Zelen* (2008) 167 Cal.App.4th 37, 45.) The actual innocence issue is not relevant to our review unless we first determine appellant has alleged facts supporting the other four elements. We cannot make that determination without independently reviewing appellant's complaint.

DISPOSITION

The judgment is affirmed. Respondent is entitled to costs.

DUNNING, J.*

We concur:

MANELLA, P. J.

COLLINS, J.

* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.